

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE.

WILLIAM T. JOHNSON JR.  
PETITIONER.

v.

STATE OF DELAWARE  
AND THOMAS CARROLL, WARDEN.  
RESPONDENTS.

NO: 05-

COURT BELOW:

SUPERIOR COURT NEWCASTLE COUNTY

JUDGE FRED S. SILVERMAN!

ID. 9606009907.

CR. A. NOS. IN 96070070.

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PETITIONERS APPENDIX FOR WRIT OF HABEAS CORPUS  
UNDER 28 U.S.C. § 2254, FOR THE DISTRICT OF DELAWARE.

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DATED: 6-21-2005.

William T. Johnson Jr.  
Petitioner: 202367.  
D.C.C.  
1181 Paddock Rd.  
Enigma, Del. 19977

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## IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

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## IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

: INDICTMENT BY THE GRAND JURY  
: I.D. 9606009907WILLIAM JOHNSON  
AKA TIMOTHY JOHNSON

:

The Grand Jury charges WILLIAM JOHNSON AKA TIMOTHY JOHNSON with the following offenses:

COUNT I. A FELONYJ#N 910-07-0070

THEFT in violation of Title 11, Section 841 of the Delaware Code of 1974, as amended.

WILLIAM JOHNSON AKA TIMOTHY JOHNSON, between the 24th day of December 1995 and the 10th day of January, 1996 in the County of New Castle, State of Delaware, did take pursuant to a common scheme, with intent to appropriate, property consisting of assorted merchandise belonging to Sears and valued in excess of \$500.00.

COUNT II. A MISDEMEANORJ#N 910-07-0071

ISSUING A BAD CHECK in violation of Title 11, Section 900 of the Delaware Code of 1974, as amended.

WILLIAM JOHNSON AKA TIMOTHY JOHNSON, on or about the 24th day of December, 1995, in the County of New Castle, State of Delaware, did issue check number 129, drawn on the account of William T. Johnson, Jr. held with the PNC Bank and made payable to Sears stores in the

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amount of \$299.99, knowing that said check would not be honored by the drawee.

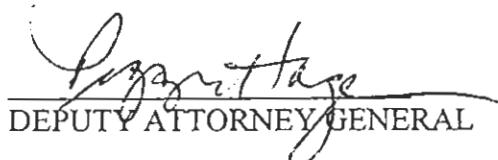
COUNT III. A MISDEMEANOR

T#N 96-07-0072

ISSUING A BAD CHECK in violation of Title 11, Section 900 of the Delaware Code of 1974, as amended.

WILLIAM JOHNSON AKA TIMOTHY JOHNSON, on or about the 10th day of January, 1996, in the County of New Castle, State of Delaware, did issue check number 138, drawn on the account of William T. Johnson, Jr. held with the PNC Bank and made payable to Sears stores in the amount of \$288.96, knowing that said check would not be honored by the drawee.

A TRUE BILL

  
(FOREPERSON)  
ATTORNEY GENERAL  
DEPUTY ATTORNEY GENERAL

A-2.

## TRUTH IN SENTENCING GUILTY PLEA FORM

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR \_\_\_\_\_ COUNTY \_\_\_\_\_

STATE OF DELAWARE  
V.CR. A. NO. 960609907WILLIAM DUNN

The defendant must answer the following questions in his or her own handwriting.

Date of Birth 11-12-71 Last grade in school completed 12thHave you ever been a patient in a mental hospital? noAre you under the influence of alcohol or drugs at this time? noHave you freely and voluntarily decided to plead guilty to the charges listed in your written plea agreement? yesHave you been promised anything that is not stated in your written plea agreement? noHas your attorney, the State or anyone threatened or forced you to enter this plea? no

Do you understand that because you are pleading guilty you will not have a trial and you therefore waive (give up) your constitutional right:

- (1) to be presumed innocent until the State can prove each and every part of the charge(s) against you beyond a reasonable doubt;
- (2) to a speedy and public trial;
- (3) to trial by jury;
- (4) to hear and question the witnesses against you;
- (5) to present evidence in your defense;
- (6) to testify or not testify yourself; and,
- (7) to appeal to a higher court?

OFFENSE Theft (F) STATUTORY PENALTY 2 yr. TIS GUIDELINE 12 mos @ 2

96 051 23 P 3:45

*PROBATION* Yes

TOTAL CONSECUTIVE MAXIMUM PENALTY: 2 yr. (See Rule 11 plea)Do you understand that, if incarcerated, you will not be eligible for parole and the amount of early release credits which you may earn will be limited to a maximum of ninety (90) days per year? yesIs there a mandatory minimum penalty? no If so, what is it? \_\_\_\_\_Has anyone promised you what your sentence will be? noAre you on probation or parole? yes (A guilty plea may constitute a violation.)Do you understand that a guilty plea to a felony will cause you to lose your right to vote, to be a juror, to hold public office, to own or possess a deadly weapon and other civil rights? yesAre you satisfied with your lawyer's representation of you and that your lawyer has fully advised you of your rights and of the result of your guilty plea? yesRe: Plaintiff

Defense Counsel

10-23-96

Date

William Dunn

Defendant

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE,  
WILLIAM T. JOHNSON JR. | ID.#9606009907,  
V. | CR.A.NOS IN 96070070  
STATE OF DELAWARE. | SUPERIOR COURT,  
| NEWCASTLE COUNTY,  
| THE HONORABLE JUDGE,  
| FRED S. SILVERMAN.

*20071026*  
S  
**MOTION FOR AMENDED SENTENCING AND/OR  
TO WITHDRAW GUILTY PLEA.**

COMES NOW THE DEFENDANT WILLIAM T. JOHNSON JR.,  
PROSE, WHO RESPECTFULLY MOVES THIS HONORABLE COURT  
FOR AN ORDER GRANTING HIS REQUEST FOR A EVIDENTIARY  
HEARING TO AMEND AND/OR TO WITHDRAW GUILTY PLEA  
THAT WAS INVALID UNDER STATE AND FEDERAL  
CONSTITUTIONAL LAW. IN SUPPORT OF THIS MOTION  
THE DEFENDANT OFFERS THE FOLLOWING GROUNDS.

ON OCTOBER 23RD, 1996 THE DEFENDANT PLED GUILTY  
TO A THEFT CLASS 6 FELONY CHARGE; IN VIOLATION  
OF 11 DEL.C. §841(A). THE PLEA AGREEMENT WAS ACCEPTED BY  
THE HONORABLE JUDGE: FRED S. SILVERMAN, AND  
SENTENCE WAS IMPOSED THAT SAME DAY.

(1).

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THE DEFENDANT HAS NOW ACKNOWLEDGE THAT,  
ACCORDING TO 170 DEL. LAWS C.364 PROVIDES:  
THAT THE GOVERNOR HAS AMENDED THE THEFT CLASS (G)  
FELONY VALUE OF PROPERTY FROM \$500 TO \$1,000 OR GREATER.  
[THIS AMENDMENT BECAME EFFECTIVE THE DAY AFTER  
ITS ENACTMENT INTO LAW, AND MUST APPLY TO  
OFFENSES COMMITTED ON OR AFTER THAT DATE.]  
THE ACT WAS SIGNED BY THE GOVERNOR ON JULY 11TH, 1995.  
THEREFORE, THE DEFENDANT'S ARGUMENT IS THAT THE  
PLEA AGREEMENT DATED OCTOBER 23RD, 1996 IS ERRONEOUSLY  
INCORRECT UNDER STATE AND FEDERAL CONSTITUTIONAL LAW,  
AND SHOULD NOT HAVE BEEN ACCEPTED BECAUSE OF GROUNDS:  
(A) THE DESCRIPTION OF PLEA READS "THEFT OVER \$500 CLASS (G)  
FELONY WHICH IS INCORRECT, IT SHOULD READ THEFT  
UNDER \$1,000 CLASS (A) MISDEMEANOR, BECAUSE THE GOVERNOR'S  
AMENDMENT ENACTMENT WAS EFFECTIVE BEFORE THE OFFENSES  
IN THIS CASE WAS ALLEGEDLY COMMITTED, AND THE  
ENACTMENT MUST APPLY TO THIS CASE IN ORDER FOR THE  
PLEA TO BE VALID.  
(B) THE VALUE OF PROPERTY INVOLVED IN THIS CASE  
IS LESS THAN \$1,000 AND ACCORDING TO THE GOVERNOR'S  
ENACTMENT BY CONSTITUTIONAL LAW, THE ALLEGED THEFT  
IS AN CLASS (A) MISDEMEANOR, AND NOT A CLASS  
(G) FELONY.

(2).

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(C) COUNSEL, RAYMOND M. RADULSKI VIOLATED THE DEFENDANT'S SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, BY FAILING TO BRING TO THE DEFENDANT'S ATTENTION MATTERS CONCERNING THE GOVERNOR'S AMENDMENT ENACTMENT, WHICH HAD COUNSEL DONE SO, THE DEFENDANT WOULD NOT HAVE ACCEPTED PLEA AGREEMENT.

WHEREFORE, PURSUANT TO THE DUE PROCESS CLAUSE UNDER THE FOURTEENTH AMENDMENT, A DEFENDANT HAS THE RIGHT TO ATTACK ANY ILLEGAL CONVICTION OR SENTENCE, HAVING FOUND THAT THE DEFENDANT HAS SHOWN PROPER CAUSE, AND WHICH ENTITLES HIM TO SUCH RELIEF THE COURT FINDS JUST. THE DEFENDANT HAS SHOWN "PREJUDICE THAT AMOUNTED TO MANIFEST INJUSTICE," WHICH BARS TO RELIEF WILL NOT APPLY TO THIS CASE WHERE THE TRIAL COURT HAS LACKED JURISDICTION, OR THAT THERE WAS A MISCARRIAGE OF JUSTICE BECAUSE OF A CONSTITUTIONAL VIOLATION THAT UNDERMINED THE FUNDAMENTAL LEGALITY, RELIABILITY, INTEGRITY, OR FAIRNESS OF THE PROCEEDINGS, LEADING TO THE JUDGMENT OF CONVICTION.

WHEREFORE, THE DEFENDANT REQUEST THAT THE HONORABLE JUDGE: FRED S. SILVERMAN CONDUCT A HEARING TO CORRECT THIS MATTER AT HIS EARLIEST POSSIBLE CONVIENCE.

RESPECTFULLY SUBMITTED.

William F. Adams #202367  
Defendant Prose

D.C.C.

P.O. Box 500

Imperial, Del. 19977

(3).

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CERTIFICATE OF SERVICE

I, WILLIAM T. JOHNSON JR., hereby certify that I have served a true and correct copy(ies) of the attached: ENCLOSED  
MOTION, upon the following parties/person(s):

TO: DIANE M. GOFFEE  
DEPUTY ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE  
820 N. FRENCH ST 7TH Floor  
WILM, DEL. 19801

TO: \_\_\_\_\_

1999 NO 17 PM 15  
FILED  
PROBATIONARY

TO: \_\_\_\_\_

TO: \_\_\_\_\_

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977, postage to be paid by the Dept. of Corrections.

On this 15<sup>th</sup> day of NOVEMBER, 1999.

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